

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

JANE DOE

Plaintiff,

v.

Case No. 1:11 CV 1105

LINDA HOWARD,
RUSSELL HOWARD

Defendants.

**REQUEST FOR ENTRY OF
DEFAULT AGAINST DEFENDANT LINDA HOWARD**

Plaintiff hereby requests that the Clerk enter default in this matter against Defendant Linda Howard pursuant to Federal Rule of Civil Procedure 37(b)(2)(A) for failure to comply with a Court Order to compel discovery, as fully appears from the court file herein and from the attached Declaration of Daniel E. Chudd, attorney for Plaintiff ("Chudd Decl.").

Plaintiff has moved to compel Defendant Linda Howard's continued participation in the discovery process on three occasions: first, to compel Howard's appearance at an oral deposition on June 1, 2012 (Docket No. 92); second, to compel the production of documents in response to Plaintiff's Second Request for Documents on June 5, 2012 (Docket No. 94); and third, to compel answers to Jane Doe's Second Interrogatories on June 15, 2012 (Docket No. 96).

On June 18, 2012, this Court issued an Order requiring Defendant Linda Howard to comply with Plaintiff's discovery requests by July 2, 2012, and stated that the Court would strike Mrs. Howard's answer if she continued to obstruct the discovery process (Docket No. 99).

On July 13, 2012, Daniel E. Chudd, attorney for Plaintiff, certified that Defendant Linda Howard failed to present herself for oral deposition or to produce documents responsive to Jane Doe's Requests as of that date (Docket No. 104). Consequently, this Court entered an Order striking Defendant Linda Howard's Answer on July 18, 2012 (Docket No. 106).

Pursuant to Rule 37(b)(2)(A) of the Federal Rules of Civil Procedure and consistent with the decisions of this Court and Circuit, default may be entered against Defendant Linda Howard for failure to comply with a discovery order. *Hathcock v. Navistar Int'l Transp. Corp.*, 53 F.3d 36, 40 (4th Cir.1995) ("default sanction can, under certain circumstances, be an appropriate response to the violation of a Rule 16 order"); *Progressive Cas. Ins. Co. v. Cockrell's Marine Ry.*, No. 3:07cv245, 2007 U.S. Dist. LEXIS 81798, at *8-9 (E.D. Va. Nov. 5, 2007) (acknowledging striking a answer and subsequent default as appropriate remedies for discovery noncompliance); *Jenkins v. Bracken, LLP*, No. 5:09-cv-80, 2011 U.S. Dist. LEXIS 94328, at *6 (W.D.N.C. Aug. 23, 2011) (noting that Federal Rule of Civil Procedure 37 "provide[s] for the use of a default judgment as a sanction for violation of the discovery rules").

Accordingly, because this Court has struck Linda Howard's Answer for failure to comply with its discovery order, Plaintiff requests that this Court enter default against Defendant Linda Howard.

Respectfully submitted,

Dated: July 20, 2012

By: /s/ Daniel E. Chudd

Daniel E. Chudd (VA Bar No. 65335)
Sarah A. Maguire (VA Bar No. 71232)
Lorelie S. Masters (*Pro Hac Vice*)
Leah J. Tulin (*Pro Hac Vice*)
Maya D. Song (*Pro Hac Vice*)
Chavi Keeney Nana (*Pro Hac Vice*)

JENNER & BLOCK LLP
1099 New York Ave., N.W., Suite 900
Washington, DC 20001
Phone: 202-639-6000
Fax: 202-639-6066

Counsel for Plaintiff Jane Doe

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2012, a true and correct copy of the foregoing Request for Entry of Default was electronically filed. As such, this notice was served on all parties who are deemed to have consented to electronic service. On July 20, 2012, I also caused to be served by electronic mail and by U.S. Mail, a copy of the Motion upon the following:

LINDA HOWARD
1028 Walter Reed Dr. Apt. 634
Arlington, VA 22204
lhowardhawk@yahoo.com

RUSSELL HOWARD
1028 Walter Reed Dr. Apt. 634
Arlington, VA 22204
russlindy@gmail.com

/s/ Daniel E. Chudd
DANIEL E. CHUDD (VA Bar No. 65335)

Attorney for Plaintiff Jane Doe